IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 135 of 2001

in

SPECIAL CIVIL APPLICATIONNo 8552 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MAHANT JANARDANKUMAR NARAYANDAS

Versus

HV BHAVNANI, REGISTRAR OR HIS SUCCESSOR IN OFFICE

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Appearance:

MR MB GANDHI for Appellant.
MR MITUL K SHELAT for Respondents No. 1 & 2.
No one appears on behalf of respondents No. 3, 5, 6 and 7 despite service.
DR MAHESH THAKAR for Respondent No. 4

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CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE N.G.NANDI

Date of decision: 07/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

This Letters Patent Appeal is directed against the judgment and order dated 28th of June 2000 passed by the learned Single Judge in Special Civil Application No. 8552 of 1999 whereby the petition was rejected. The appellant herein, i.e., the original-petitioner was appointed as a Lecturer in Sculpture on temporary basis for the academic year 1992-93 and again for the academic years 1997-98 and 1998-99 in the M.S. University, Vadodara. It is also the case of the appellant that the University by a public notice invited applications in the year 1995 for selection and appointment to the post of Lecturer in Sculpture. The appellant had applied in response to that notice inviting applications for the said post for which the interviews were held in May 1998. The appellant was not found suitable and therefore he was not selected. Aggrieved from his non-selection as aforesaid he preferred a Special Civil Application No. 991 of 1999 before this Court. The said Special Civil Application was rejected as withdrawn on 13th of April 1999 and the appellant was permitted to make a representation in the subject matter to the University with a liberty to him to approach this Court in case an adverse decision is taken. The appellant made a representation and upon considering the representation, ofcourse he was not offered permanent appointment but he was offered a temporary employment for the post of Lecturer for the academic year 1999-2000. The appellant did not accept this offer of temporary appointment and preferred the Special Civil Application in question again.

2. The appellant claims to be qualified for the post of Lecturer in Sculpture and claims that he belongs to Socially and Economically Backward Class and that one of the posts of Lecturers is reserved for Socially and Educationally Backward Class candidate and he being the only SEBC applicant was entitled for appointment to the said post. It is claimed by the appellant that according to the prevalent Government policy he ought to have been selected and appointed as an SEBC candidate. He relies upon an affidavit which was filed by respondent No.7, one of the members of the Syndicate who has stated in the affidavit that the majority of the Syndicate members had

voted in his favour and his case has been wrongly rejected by respondents No. 1 and 2, i.e., the Registrar and Vice-Chancellor of M.S. University.

3. On behalf of the University, Ordinances No. 198-B and 198-BB were relied upon. Ordinance No. 198-BB provides for appointment by a Selection Committee and that the appointment of teachers for University shall be made by the Syndicate on the recommendations of the Selection Committee. Clause 7 of this Ordinance empowers the Vice-Chancellor to make temporary appointment for a period not exceeding one year. It has been submitted by Mr. Mitul K. Shelat on behalf of the University that once the appellant had not been selected, there is no question of giving regular or permanent appointment to him on the post in question and all that could be done by the Vice-Chancellor was to offer him temporary appointment which has been done by the Vice-Chancellor and the temporary appointment was offered to him for 1999-2000, but the appellant did not accept the same and chose to prefer the Special Civil Application in question.

4. We have heard learned counsel for both the sides and have gone through the impugned judgment and order. We find, that, admittedly, the appellant had not been selected by the Selection Committee and in absence of selection by a duly constituted Selection Committee according to the relevant provisions of Ordinance No. 198-BB, the appellant could not be appointed and the temporary employment as was offered by the Vice-Chancellor for the year 1999-2000 was not availed by him, for which he has to thank himself.

5. Learned Counsel for the appellant has invited our attention to the order dated 13th of April 1999 passed by this Court in the earlier Special Civil Application No. 991 of 1999 and it has been stated that petitioner was the only available candidate in the reserved category of SEBC and was serving in the University in the Fine Arts Faculty and therefore when he made the representation after the order dated 13th of April 1999 he should have been given an appointment on regular basis instead of the temporary employment as was offered for the academic session of 1999-2000. Learned Counsel for the appellant has also invited our attention to the letter dated 25th September 1989 which was sent to the Principals of Government colleges and while making reference to Para No.3 of this letter it has been submitted that in case there was any candidate of backward class for reserved vacancy and he is holding the qualifications and

eligibility for any post and he appears for such selection he has to be selected and therefore his non-selection by the Selection Committee was contrary to this decision of the Government of Gujarat as contained in letter dated 25th September 1989. So far as this argument is concerned, it will be suffice to say, firstly, that this letter was addressed to the Principals of Government colleges and not to the University. It may also be observed, that the Government cannot issue any such directions to the University so as to interfere with its autonomy that against the reserved vacancy if a candidate is eligible and appears then he has to be selected. Besides this fact in the facts and circumstances of the present case, the Government has not issued any such direction to the University. We are of the opinion that Government can issue any orders or directions to the Universities only with regard to the decisions which entail a financial liability and otherwise in matters of academic importance and appointments of teachers, the Government cannot issue any direction to the University so as to bind the University that a person holding the qualifications for a post and if he belongs to a backward class and even if there is only one post he has to be selected and cannot be rejected. We find, that neither this course of action is open for the Government nor the same has been followed in the instant case and the argument advanced by Mr. Gandhi on behalf of the appellant in this regard is wholly misconceived. No provision whatsoever has been pointed out before us on the basis of which the Government could interfere to this extent with the autonomy of the University and if such practice is allowed, the autonomy of the University will be in peril. Faced with this position, learned counsel for the appellant reverted back to the office note (Ann. J at P. 53 of the Paper Book) prepared by Off.Asst. Registrar/Registrar of M.S. University which is said to have been submitted to the Syndicate. In this office note, it has been mentioned that the appellant sent a representation to District Social Welfare Officer who in turn, has informed the University to follow the provisions contained in G.R. dt. 10.2.92 and also to follow the contents of the letter dt. 25.9.89 from the office of the Director of Higher Education addressed to the Principals of Government colleges. That the Selection Committee was not aware of the provisions of G.R. that when the post is under reserved category and the candidate of such reserved category is available he/she ought to have been selected if otherwise found suitable for the post. In our opinion, such an Office Note is of no avail to the appellant's case before us. The District Social Welfare

Officer is no Body/or Authority to tell the University to follow the G.Rs. which were neither meant nor could be meant as directives to the University. Selection Committee may not have been aware of such G.Rs. but even if it was made aware, the same could neither bind nor could fetter its decision. Even otherwise, according to the contents of the note itself according to G.R., the candidate of reserved category is to be selected against the post of reserved category only if he is otherwise found suitable for the post. Suitability for the post if sine quo non for selection and the fact on record is that the appellant was not found to be suitable by the Selection Committee.

6. The learned Single Judge has therefore rightly held that there is no scope of judicial review under Article 226 on the decision taken by the Selection Commitee and there was no question of issuing any direction to the University to offer a regular appointment to the present appellant and to fill-up the post in question by appointing the present appellant as a permanent Lecturer from the date of his initial temporary appointment as had been prayed by him in the Special Civil Application.

7. The learned Single Judge has clearly observed that the selection of respondent No.4 was not the subject matter of challenge nor the petitioner has claimed appointment in place of respondent No.4. Even before us, the appellant did not challenge the appointment of respondent No.4 and it appears that the respondent No.4 has been wrongly impleaded as a party to the petition. So far as the grievance which has been raised on the basis of the affidavit filed by one of the members of the Syndicate, i.e., respondent No.7, we may hasten to add that in case any decision is taken by a body in a meeting, the Minutes of the meeting of such body form the relevant and basic material for the purpose of determining as to what had actually happened in that meeting. Any member subsequently giving a different version cannot undo the effect of the Minutes. According to the law of meetings, nothing said subsequently by any particular member can be used to undo the decision recorded in the Minutes. On behalf of the University, the Minutes of the Syndicate's meeting dated 2nd of August 1999 have been placed on record wherein the presence of respondent No.7, namely Shri H.J. Parikh has been recorded. Out of 22 members in all, the meeting of the Syndicate was attended by 16 members and on consideration of the appellant's representation in terms of the order passed by the High Court in Special Civil

Application No. 991 of 1999, it was recorded that the Syndicate had no powers to appoint a person who has not been selected and it was resolved that the Vice-Chancellor be authorised to take a decision to appoint the appellant as a temporary Lecturer for a period of one year in the Department of Sculpture, Faculty of Fine Arts for the academic year 1999-2000, and it was further resolved that a Committee consisting of Shri Harivadan J. Parikh, Dr. Jayshreeben P. Mehta and Ajay Joshi be constituted to overview the progress and performance of the appellant and also to ensure that he is not victimised and harrassed in any way. Needless to repeat here that such appointment was offered to him by the Vice-Chancellor for the year 1999-2000 but the appellant did not avail the same. No party can take recourse of pick and choose system by impleading a particular member of the Syndicate as a respondent and omitting to implead others who were present in the meeting and make an attempt to contradict the correctness of the Minutes of the meetings.

8. We, therefore, do not find any merit in this Appeal, so far as the challenge to the rejection of the Special Civil Application is concerned. However, we notice, that while rejecting the petition, the learned Single Judge has also imposed a cost of Rs. 1,000/- to be paid by the appellant to the respondent No.4. In the facts and circumstances of this case, we find that this direction with regard to the cost be made easy. We order accordingly. The Appeal is hereby dismissed, as above.

[ M.R. Calla, J. ]

rmr. [ N.G. Nandi, J. ]